

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION

IN THE MATTER OF T.D. and T.W.)	
)	Case No. 02-38
Claimant,)	
v.)	ALJ: Hon. W. Jay Reynolds
)	
THE DEPARTMENT OF)	
CHILDREN'S SERVICES,)	
)	
Respondent.)	

ORDER

INTRODUCTION

On May 10, 2000, T.D. came into the custody of the Tennessee Department of Children's Services (hereinafter "DCS") based upon findings that his mother, T.W., was medically fragile, that T.D. and his brothers exhibited multiple behavioral problems, and that the mother was consequently unable to control the behaviors of T.D. and her other two boys. In response to the Referee's ruling, DCS placed T.D. in certain foster care placements, including two different foster homes, a three-month stay in a contract group home, a short stay in Peninsula Hospital (a mental health care treatment center), a short stay in an evaluation center for DCS, a stay at the Wiley Center in Greeneville, at which time he attended an in-house school, and an extended stay in a residential treatment center in Chattanooga where he attended an in-house school at Cumberland Hall. These placements are more fully set forth in the Joint Stipulation of Undisputed Facts (Trial Exhibit "C"). Prior to coming into the custody of DCS, T.D. was eligible for

special educational services and he remained so during the time that he has been in the custody of DCS. T.D. is currently still in the legal custody of DCS, but has been temporarily placed in the home of his mother, T.W. for a trial home placement.

During his time in the custody of DCS, T.D. was eligible for Supplemental Security Income benefits (hereinafter "SSI"), for which DCS became the representative payee.

This cause came to be heard on the 21st and 22nd day of April, 2003. The Court defines the issue as follows: Does the use, by a child welfare agency (DCS), which acted as a representative payee under the Social Security Act, of a child (T.D.) beneficiary's SSI benefits, to defray the cost of a residential placement, violate the provisions of IDEA, (including FAPE provisions) or violate the provisions of Social Security law and regulations. This case raises the concerns addressed in *Washington State Department of Social and Health Services, et al. v. Guardianship Estate of Danny Keffeler*, 123 Supreme Court 1017 (2003), including eligibility of T.D. for SSI benefits.

MOTION TO DISMISS

Prior to the hearing, the Tennessee Department of Children's Services, (hereinafter "DCS"), filed a Motion to Dismiss this matter asserting lack of jurisdiction over the subject matter; improper venue; failure to state a claim upon which relief can be granted; and asserting that DCS is not the Local Educational Agency (hereinafter "LEA") or a public agency, as defined by the Individuals with Disabilities Education

Act (hereinafter "IDEA") for the in-house schools that T. D. attended while he was in DCS custody. The Court denies that motion to dismiss.

WITNESS CREDIBILITY

The finder of fact, be it a jury or an administrative law judge, is charged with weighing the credibility of the various witnesses during a hearing. After viewing their demeanor, responsiveness, and whether or not witnesses were forthright in their answers as opposed to evasive or combative, the court makes the following findings as to witness credibility.

1. The Court finds John Sparks to be credible.
2. The Court finds Paul VanderMeer to be credible.
3. The Court finds Mary Meador to be less credible, not that she intentionally deceived, but she either wasn't well versed in what she was going to testify about and she truly didn't know, or she was being vague.
4. The Court finds Skip Williams to be credible.
5. The Court finds Margaret Dorse to be credible.

PROOF

This decision is predicated upon the pleading submitted, the testimony, the statements of counsel and the Exhibits that are marked "A" through "AA" and which include a joint stipulation of facts.

The testimony of Paul VanderMeer, John Sparks and probably Mr. Williams and Ms. Dorse indicated that DCS receives DOE monies. Skip Williams testified that the child was removed from the mother's custody for behavioral and emotional reasons. After T.D. came into custody, DCS became the representative payee for T.D.'s SSI benefits. John Sparks testified that the money outlaid on behalf of T. D. exceeded the monthly amount of SSI received, estimated at \$40,000.00 outlaid and \$6,000.00 received. Paul VanderMeer testified that the outlay of SSI money was for the current maintenance of T.D., including his food, shelter, and reasonable needs. Mr. VanderMeer also testified that the outlay was for fixed compensation schedules to foster care providers.

FINDINGS OF FACT

In response to the issue as framed above, the Court finds as follows:

1. T.D. was removed from his mother's custody because of behavioral and emotional reasons.
2. T.D. was placed in the custody of DCS on May 10, 2000.
3. The mother, T.W., was the representative payee for T.D.'s SSI benefits before T.D. was placed in the custody of DCS. DCS became the representative payee for T.D. while he was in the physical custody of DCS. The mother has now become the representative payee for T.D. since he has returned to her physical custody (T.D. remaining in the legal custody of DCS until further court hearing by the Knox County Juvenile Court.)

4. DCS receives DOE monies.

5. DCS provided resources, including but not limited to, educational services and benefits to T. D. , who otherwise would have had insufficient resources to maintain a minimum standard.

6. DCS outlaid money on behalf of T.D. which exceeded the monthly amount of SSI received, with the estimated amounts being \$40,000.00 outlaid and \$6,000.00 received in SSI benefits.

CONCLUSIONS OF LAW

1. For purposes of IDEA and for T.D.'s purposes, the Department of Children's Services is a public agency and is the LEA.

2. Relying heavily on *Washington State Department of Social and Health Services, et al. v. Guardianship Estate of Danny Keffeler*, 123 Supreme Court 1017 (2003), DCS' use of the SSI benefits did not violate Social Security Administration rules and regulations and did not violate IDEA.

3. DCS acted in such a way as not to jeopardize the SSI payments, that is, they acted in such a way as to not make T.D. ineligible for SSI benefits.

4. DCS acted in the best interest of T.D. by assuring that his basic needs were met and, borrowing from the Keffeler case, "By assuring that their basic needs are met and not by maximizing a trust fund attributable to fortuitously overlapping state and federal grants."

5. The outlay of SSI money by DCS was for the current maintenance of T.D.,

including his food, shelter, reasonable needs and care.

6. DCS is not a creditor for T. D. for serving as a representative payee for T.D.'s SSI benefits, and the outlay by DCS of the SSI funds was for fixed compensation schedules to foster care providers.

7. To rule otherwise would tax DCS to a point where they may decline to become representative payees in the future.

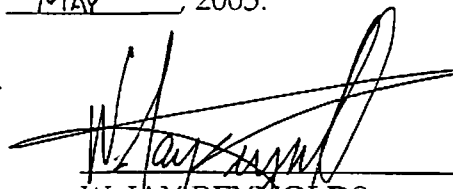
ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the due process hearing is dismissed with prejudice.

DCS is the prevailing party.

ENTERED this 28th day of MAY, 2003.

Nunc pro tunc April 22, 2003.

A handwritten signature in black ink, appearing to read 'W. Jay Reynolds', is written over a horizontal line.

W. JAY REYNOLDS
ADMINISTRATIVE LAW JUDGE
55 Court Street, Suite A
Savannah, TN 38372